

KESANG LEASING SDN. BHD.

v.

MOHD. YUSOF ISMAIL & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR

EUSOFF CHIN J

[CIVIL APPEAL NO. R8-11-10-89]

20 SEPTEMBER 1989

HIRE PURCHASE: Hire purchase agreement - Hire of a computer - Computer not an item specified in 1st Schedule of Hire Purchase Act 1967 - Whether Act applies - Whether parties to the hire purchase agreement can contract to be bound by the Act.

The plaintiff and the 1st defendant entered into a hire purchase agreement for the hire of a computer which is not an item within the goods specified in the 1st Schedule of the Hire Purchase Act 1967. The defendant defaulted in the repayment of the instalments and the computer was repossessed and sold. The plaintiff took out an action for the recovery of the outstanding amount after the sale. The Magistrate dismissed the claim on the ground that since the subject matter of the hire purchase agreement does not fall under the items to the 1st Schedule of the Act, a claim under the Act is wrong. The plaintiff appealed against this decision.

Held:

[1] The Magistrate misdirected herself as the plaintiff did not state in the statement of claim that it was a claim under the Hire Purchase Act 1967.

[2] That, even though it is a claim under the Act, the action can be maintained.

[3] Section 1(2) of the Act does not exclude the application of the provision of the Act to hire-purchase agreements in respect of goods not specified in the 1st Schedule, where the parties to the agreement have agreed to be bound by the Act.

[Appeal Allowed.]

For the appellant - W.Y. Yuen m.o.b. for K. Gomes; M/s. Nordin Hamid & Co.

For the respondents - Not represented

JUDGMENT**Eusoff Chin J:**

This is an appeal by the plaintiff/appellant against the dismissal of his claim against the defendant by the Magistrate on 28 November 1987.

The facts are that on or about 8 May 1986, the plaintiff and the 1st defendant/respondent entered into a hire purchase agreement dated 8 May 1986 for the hire of one unit of a Houston Micro Personal Computer 640 KBC/W dual drive (the computer) with a unit of a Green Monitor, serial number 103392 and 3102.

Further on or about 8 May 1986 pursuant to the abovesaid agreement the plaintiff and the 2nd defendant/respondent entered into a guarantee agreement dated 8 May 1986 whereby the 2nd defendant agreed to guarantee and indemnify the plaintiff on all losses, charges and expenses which may be sustained by reason of the 1st defendant or borrower's neglect to observe or perform any of the condition in the abovesaid hire purchase agreement.

a The plaintiff's claim is for the sum of RM1,022.50, full particulars of which are:

Cash Price	RM2,913.00
Less: Down Payment	<u>913.00</u>
Amount Financed	RM2,000.00

b Add: Term Charges RM439.84
RM2,439.84

Less Instalments Paid (4 x 101-66) RM406.64
RM2,033.20

c Less: Rebate on Term Charges as at
18 December 1986 RM199.37
RM1,833.83

Add: Late Charges as at 18 December 1986 RM16.03

Advertisement for sale

d Computer 30-40
Insurance 2-24

Storage Charges from
18 December 1986 to

e 7 March 1987 RM5 per day) 400-00 RM449.67
2,283.50

Less: Sale Proceed RM1,300.00

Deduct 3% Overhead

f Selling Expenses 39.00 RM1,261.00
Amount Outstanding RM1,022.50

g The 1st defendant had basically failed to keep up with his repayment schedule and in fact had only made four (4) instalments before the said computer was repossessed. The said computer was sold to the highest bidder for RM1,300 after the said unit was advertised in the newspaper.

The learned Magistrate held in her written judgment that the transaction that took place was not that of a hire purchase transaction. The reason being that the subject matter of the agreement i.e. a computer did not fall under First Schedule of the Hire-Purchase Act 1967 and is outside the preview of the Act.

h The Magistrate held that the Hire Purchase Act 1967 (Act 212) (the Act) did not apply to the hire purchase agreement between the plaintiff and the defendant because the computer is not an item listed under the First Schedule of the Act.

The Magistrate held that the claim should be dismissed because it was brought under the Act. I think the Magistrate had misdirected herself here as the plaintiff did not in the statement of claim say that it is a claim under the Act.

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Since the amount claimed does not exceed RM10,000, the appeal is essentially on point of law as provided under s. 28 of the Court of Judicature Act 1964.

The object and purpose of the Hire Purchase Act is to regulate the form and contents of hire purchase agreements and the rights and duties of parties to such agreements. By subsection 1(2) of the Act, the provisions of the Act “shall apply in respect only of hire-purchase agreements relating to the goods specified in the First Schedule”. This certainly does not exclude the application of the provisions of the Act to hire-purchase agreements in respect of goods not specified in the First Schedule if the parties to the agreement have agreed to be bound by the provisions of the Act. In other words, in respect of goods not specified in the First Schedule to the Act, the parties are free to contract outside the provisions of the Act, or agree to be bound by those provisions.

In the appeal before me, the parties, in respect of the computer, had agreed in their hire-purchase agreement, to be bound by the provisions of the Act. It is in fact hire purchase agreement designed for use in respect of goods listed in the First Schedule to the Act, but adopted and agreed to by the parties to be used in respect of the purchase of the computer. I do not think that because of this, the hire purchase agreement is void. Indeed, such a hire purchase agreement operates to the advantage of the hirer (1st respondent).

From the record, it appears that there is no dispute as to whether the provisions of the Act had been infringed by the plaintiff.

I therefore allow this appeal with cost, set aside the order of the Magistrate, and enter judgment for the plaintiff/appellant for RM1,022.50, and costs.

Also found at [1989] 2 CLJ 1216

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